

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD,)
RICARDO GONZALES, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS)
LOCAL 38 HEALTH AND WELFARE FUND,)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS LOCAL 295-295C WELFARE)
FUND, AND STEAMFITTERS FUND LOCAL)
439, on Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiffs,)

vs.)

WALGREEN CO.,)

Defendant.)

)Case No.
)17-cv-2246

VIDEO-RECORDED REMOTE DEPOSITION OF
LYNETTE HILTON, Ph.D.
Tuesday, January 17, 2023
Volume I

*** CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER ***
Reported by:
CARLA SOARES
CSR No. 5908
Job No. 5645367
Pages 1 - 347

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1 MR. ALEXANDER: We reserve our rights --

17:35:58

2 MR. LEIB: And I understand that you'll

3 reserve your rights to object.

4 MR. ALEXANDER: Thank you, Counsel.

5 BY MR. LEIB:

17:36:00

6 Q Paragraph 62, you say it's your

7 "understanding that the Relevant PBMs should be able

8 to provide information that can be used to identify

9 transactions adjudicated by the Relevant PBMs."

10 And I didn't let you get to paragraph 62

17:36:04

11 before I asked my question, so I'm going to let you

12 get to paragraph 62, and then I'll ask it again.

13 Are you at paragraph 62?

14 A Yes. I'm reading it now.

15 Q You state in the first sentence that it is

17:36:09

16 your "understanding that the Relevant PBMs should be

17 able to provide information that can be used to

18 identify transactions associated [sic] by the

19 Relevant PBMs."

20 What is that understanding based on?

17:36:13

21 A Based on the fact that I have PBM data for

22 some of the PBMs, and it's my understanding that

23 plaintiffs are going to request that data.

24 Q I'm sorry. You dropped off a little bit.

25 So just make sure, at the end of sentences, you keep

17:36:18

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1 your voice up so that the court reporter can get it. 17:36:19

2 A Okay.

3 MR. LEIB: Was the court reporter able to
4 get that?

5 THE REPORTER: I believe so. Would you 17:36:22
6 like to hear it back?

7 MR. LEIB: I would.

8 (Record read as follows:

9 "Answer: Based on the fact that I have
10 PBM data for some of the PBMs, and it's my 17:36:23
11 understanding that plaintiffs are going to
12 request that data.")

13 BY MR. LEIB:

14 Q Is that what you said?

15 A Yes. 17:36:24

16 Q When you say "should be able to," does
17 that mean you're not sure they can provide the
18 information?

19 A I guess that is potentially a legal
20 question. It's just my understanding that that's 17:36:28
21 data that has to be requested.

22 Q I don't think it's a legal question if
23 it's in your report.

24 It's in your report, so my question is,
25 you said you -- it's your understanding the relevant 17:36:32

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1 PBMs should be able to provide information. I'm 17:36:33
2 asking, do you know if they can provide the
3 information?

4 A If they can? Yes.

5 Q So my question is, why did you phrase it 17:36:35
6 as "should be able to" as opposed to "will be able
7 to"?

8 A I guess there's potentially some sort of
9 issue with production in the court rules that those
10 data can't be turned over. Those sorts of things. 17:36:40

11 But it's my opinion that the PBMs have
12 those data and could produce them if they were
13 requested to.

14 Q So the court deciding not to have the PBM
15 turn over data doesn't mean the PBM is unable to 17:36:44
16 produce the data. So I'm not sure I understand why
17 you wrote it that way.

18 Was that just not crisp language? Would
19 you change the language if you were writing it
20 today? 17:36:49

21 A No. I stand by what I've written.

22 Yeah, I agree with you that the PBM should
23 have -- should have the data. I believe they have
24 the data. I believe they'd be able to turn it over,
25 barring any sort of legal issues. 17:36:53

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1 Q But you're not the PBM so you don't know 17:36:54
2 100 percent for sure; is that my understanding?

3 MR. ALEXANDER: Objection to form.

4 BY MR. LEIB:

5 Q Is that my understanding of what you're 17:36:57
6 saying?

7 I'm sorry. You're right. You can't tell
8 me what my understanding is. So that was a proper
9 objection.

10 MR. ALEXANDER: Thank you, Counsel. 17:37:00

11 BY MR. LEIB:

12 Q Are you saying "should be able to" because
13 you're not the PBM and you don't know for sure
14 100 percent whether they can produce that
15 information? 17:37:03

16 A I believe they have those data and they
17 can produce them. I've seen the PBM data here.
18 I've seen PBM data in other cases. So I do believe
19 those data exist.

20 Q I'm not asking whether you believe the 17:37:07
21 data exists and they can produce it. I'm asking if
22 you know if the data exists and they can produce it.

23 MR. ALEXANDER: Objection to form.

24 THE WITNESS: I know the data exists.

25 Whether or not they exist for the entire time 17:37:11

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1 period, you know, there are some caveats to that. 17:37:12

2 But yes, I know that these data do exist with PBMs.

3 BY MR. LEIB:

4 Q So it's a long time period, and it's
5 possible that they don't have data for 2007, for 17:37:15
6 example?

7 A That's possible.

8 Q You say that -- same paragraph -- you say
9 that several fields in Walgreens' transactional
10 claims data and the payer map can be used to 17:37:18
11 identify the PBM associated with a transaction,
12 including the relevant PBMs, and then you have a
13 footnote, Footnote 35. Footnote 35 has certain
14 citations.

15 Are all the fields that you're relying on 17:37:23
16 for your statement contained in that Footnote 35?

17 MR. ALEXANDER: Objection to form.

18 BY MR. LEIB:

19 Q Are all the fields that you're relying on
20 for your statement contained in the references in 17:37:27
21 Footnote 35?

22 A No. I don't -- yeah. No.

23 Q What fields are not in these citations
24 that you're also relying on --

25 A Well, I will say -- 17:37:32

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1 transaction in the Walgreens data and what the TPP 17:40:40
2 paid.

3 Q What the TPP paid to whom?

4 A To the PBM.

5 Q And to make sure a Medicare Part D 17:40:43
6 beneficiary is included, do you know what fields you
7 would need in the data that was produced by the
8 relevant PBMs?

9 A If the -- yeah. I don't know what --
10 again, what the field would be called. 17:40:47

11 But if they have fields that identify
12 whether it was federally funded, whether it was
13 Medicaid, Medicare, Medicare Part D, so that sort of
14 information would -- the PBMs would have.

15 Also, that's in Walgreens' data. But the 17:40:52
16 PBMs should have that data as well.

17 Q Paragraph 63, you refer to the data field
18 "basis of reimbursement determination."

19 Do you see that?

20 A Yes. 17:40:56

21 Q And that field that you're referring to is
22 a field in Walgreens' data.

23 Do you see that?

24 A Yes.

25 Q And you say that it's a way to determine, 17:40:58

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1 quote, "whether the adjudicating PBM used U&C prices 17:40:59
2 in the adjudication process."

3 Do you see that?

4 A Yes.

5 Q Do you agree that the value in the "basis 17:41:02
6 of reimbursement determination" field in the
7 Walgreens data is the value returned by the PBM
8 adjudicating the transaction?

9 A I believe that's right. Yes. Yes.

10 Q That is not a value determined by 17:41:06
11 Walgreens, correct?

12 A Yes.

13 Q Do you agree that all this field indicates
14 is that the U&C was a basis for the amount paid or
15 reimbursed by the PBM to Walgreens? 17:41:09

16 MR. ALEXANDER: Objection to form.

17 THE WITNESS: It indicates that the U&C
18 was used to adjudicate that particular transaction.

19 BY MR. LEIB:

20 Q Well, "used to adjudicate that particular 17:41:13
21 transaction" could mean many things. It could mean
22 it was used to tell how much the consumer should pay
23 Walgreens, correct? That's one thing adjudication
24 is.

25 MR. ALEXANDER: Objection to form. 17:41:18

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1 Objection to scope.

17:42:25

2 THE WITNESS: Yes. I don't know what goes
3 into determining what those ultimate prices will be.

4 BY MR. LEIB:

5 Q And you don't know how the pharmacy
6 benefit manager determines how much to charge the
7 TPP for that transaction, correct?

17:42:27

8 MR. ALEXANDER: Same objection.

9 THE WITNESS: That's right. I don't know
10 all the factors that go into determining what the
11 ultimate --

17:42:30

12 BY MR. LEIB:

13 Q So getting back to the question, in
14 paragraph 63, you talk about a field in Walgreens'
15 data, the "basis of reimbursement determination"
16 field.

17:42:34

17 What is your understanding that the "basis
18 of reimbursement determination" field reflects? And
19 feel free to refer to Figure 1.

20 A My understanding is that it reflects
21 transactions -- so if there's a 4 or a 5, it's the
22 transaction where the adjudication was done with U&C
23 being the "lower of." So U&C would be the lowest
24 price.

17:42:38

25 Q That's "lower of" logic, sometimes called

17:42:42

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1 "lesser of" logic, correct? 17:42:43

2 A That's right.

3 Q And "lower of" logic is just, if there's
4 multiple different variables for how a drug might be
5 priced, it's priced by the lowest of those
6 variables, correct?

17:42:47

7 A Correct.

8 Q Do you know who "lower of" logic is
9 applied to in the adjudication process?

10 In other words, going back to Figure 1, is
11 it applied to how much the TPP pays the PBM, how
12 much the PBM pays Walgreens, or how much the
13 consumers pays Walgreens, or all three? What is
14 your understanding?

17:42:51

15 MR. ALEXANDER: Objection to form.
16 Objection to scope.

17:42:56

17 THE WITNESS: I don't have an
18 understanding of that.

19 BY MR. LEIB:

20 Q Do you have an understanding of, when
21 there's a 4 or a 5 in the "basis of reimbursement
22 determination" field in the Walgreens data, whether
23 that means that the consumer paid Walgreens, with
24 U&C being a consideration in that payment?

17:42:57

25 A I guess I would say that a transaction

17:43:02

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1 being adjudicated with U&C, my assumption is it 17:43:02
2 would apply to the whole transaction. But that's
3 really a liability question or issue.

4 Q Is it a liability issue? If it's in your
5 report and it's a basis for how you -- your 17:43:07
6 methodology was created, isn't it more than just a
7 liability issue? Isn't it an issue for class
8 determination, who's in the class, and damages?

9 MR. ALEXANDER: Objection to form.
10 Argumentative. 17:43:11

11 MR. LEIB: I'm not arguing with the
12 witness. I'm just asking the witness her
13 understanding.

14 MR. ALEXANDER: Same objection.

15 THE WITNESS: My understanding is that 17:43:14
16 that field, as I said earlier, indicates that U&C
17 was used to adjudicate that claim using the "lesser
18 of" logic.

19 The assumption is that would apply, you
20 know, to the whole claim. Like I said, I think 17:43:18
21 that's a liability issue. I was asked to assume
22 liability.

23 BY MR. LEIB:

24 Q Well, if it's a liability issue, why did
25 you include it in your report? 17:43:22

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1 MR. ALEXANDER: Objection to form. 17:43:23

2 BY MR. LEIB:

3 Q You're not -- you're not the liability
4 expert here, correct?

5 A That's correct. 17:43:24

6 Q You're opining -- your opinions have
7 nothing to do with liability; is that correct?

8 A That's correct.

9 Q Why did you include paragraph 63 in your
10 report? 17:43:27

11 MR. ALEXANDER: Objection to form.

12 You can answer.

13 THE WITNESS: This is indicating that
14 there are variables available in the data that my
15 methodology could use to identify transactions that 17:43:30
16 were adjudicated using U&C.

17 BY MR. LEIB:

18 Q So you're saying that it is a field that
19 you could use to determine who's in the class,
20 correct? 17:43:33

21 A Yes.

22 Q That's not a liability issue then, is it?

23 MR. ALEXANDER: Objection to form.

24 Counsel, I'd also just like to point out
25 we had discussed going 30 or 40 minutes and then 17:43:36

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1 taking a break.

17:43:37

2 MR. LEIB: I'm going to finish this line
3 of questioning. I'm going to finish this line of
4 questioning --

5 MR. ALEXANDER: Great.

17:43:39

6 MR. LEIB: -- and then we can take the
7 break.

8 MR. ALEXANDER: Of course. Thank you,
9 Counsel.

10 THE WITNESS: That -- the way that you
11 phrased that, no, that's not a liability issue. I
12 was referring to the issue you asked before, whether
13 I knew whether the consumer would also get the
14 "lower of" logic.

17:43:41

15 BY MR. LEIB:

17:43:45

16 Q Well, let's look back at the definition,
17 for a second, of the class. Because you are opining
18 on a methodology for determining who's in the class,
19 correct?

20 A (Witness nods head.)

17:43:48

21 Q I need a verbal answer.

22 A Yes. Sorry.

23 Q And one of the things defined in the
24 class, or included in the definition in the
25 "proposed class" definition on page 2 of your

17:43:51

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1 report, is "where the usual and customary price was 17:43:53
2 a basis for the amount paid or reimbursed in
3 connection with the purchase of such drug," correct?

4 A Yes.

5 Q And that's the part of the definition that 17:43:56
6 you are attempting to discuss here in paragraph 63,
7 correct?

8 A Yes.

9 Q And this is in a section that's
10 Appendix B, identifying class members, correct? 17:43:59

11 A I believe so. Yes.

12 Q So if there's a 4 or a 5, is it your
13 understanding that that means that the consumer paid
14 according to "lower of" logic, with U&C being one of
15 the considerations in the "lower of" logic? 17:44:04

16 MR. ALEXANDER: Objection to form. The
17 witness has now answered this question at least
18 twice.

19 BY MR. LEIB:

20 Q You can answer. 17:44:07

21 A Can you either restate it, or I can read
22 it off of the realtime?

23 Q So assuming there's a 4 or 5 in the "basis
24 of reimbursement determination" field in the
25 Walgreens data for a particular transaction, is it 17:44:11

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1 your understanding that that means that the consumer 17:44:11
2 paid according to "lower of" logic, with U&C being
3 one of the considerations in the "lower of" logic?

4 MR. ALEXANDER: Same objection.

5 THE WITNESS: I would say yes, that's my 17:44:16
6 assumption.

7 BY MR. LEIB:

8 Q And assuming that there's a 4 or 5 in the
9 "basis of reimbursement determination" field in the
10 Walgreens data for a particular transaction, is it 17:44:19
11 your understanding that that means that the PBM paid
12 Walgreens according to "lower of" logic, with U&C
13 being one of the considerations in the "lower of"
14 logic?

15 MR. ALEXANDER: Same objections. 17:44:23

16 THE WITNESS: Again, that's -- that's my
17 assumption based on the fact that I was asked to
18 assume liability.

19 BY MR. LEIB:

20 Q And assuming there's a 4 or 5 in the 17:44:26
21 "basis of reimbursement determination" field in the
22 Walgreens data for a particular transaction, is it
23 your understanding that that means that the TPP paid
24 the PBM according to "lower of" logic, with U&C
25 being one of the considerations in the "lower of" 17:44:31

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1 logic?

17:44:31

2 MR. ALEXANDER: Same objection.

3 THE WITNESS: That's my assumption based
4 on assuming liability.

5 MR. LEIB: We can take the lunch break.

17:44:33

6 How long would you like for lunch,
7 Dr. Hilton?

8 MR. ALEXANDER: I'll defer to Dr. Hilton.

9 Do you need 30, 45 minutes?

10 MR. LEIB: That's what I'm asking.

17:44:36

11 MR. ALEXANDER: Which one would you
12 prefer?

13 THE WITNESS: I'm sorry. What were the
14 options? 30 or 45?

15 MR. LEIB: 30 or 45 would be normal

17:44:39

16 options. Anything in between is also fine.

17 Whatever you want.

18 THE WITNESS: Why don't we say -- I don't
19 know -- 45. Is that --

20 MR. LEIB: 45. We'll come back on the
21 record at 12:25 [sic] p.m.

17:44:42

22 THE WITNESS: Okay.

23 THE VIDEO OPERATOR: Off the record,
24 12:41 p.m.

25 (Recess, 12:41 p.m. - 1:28 p.m.)

17:44:45

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1 A Yes.

17:51:58

2 Q And on Exhibit 3C -- which is
3 illustrations of fund plaintiff overpayments,
4 correct?

5 A Yes.

17:52:00

6 Q -- did you check if some or all of these
7 transactions have a 4 or 5 in the "basis of
8 reimbursement determination" field in the Walgreens
9 data?

10 A That's something, yes, that I might have
11 looked at. Again, given my assumption and what we
12 were just talking about with respect to
13 paragraph 63, it wasn't something that was
14 necessary, but I probably did look at it.

17:52:03

15 Q And do you know the results of what you
16 found?

17:52:08

17 MR. ALEXANDER: Objection to form.

18 THE WITNESS: I don't recall.

19 BY MR. LEIB:

20 Q In paragraph 66 of your report, which you
21 pointed to a few minutes ago, you state that "PBM
22 data can be used to determine whether the U&C price
23 was used as a basis for determining the amount paid
24 or reimbursed when adjudicating the claim," correct?

17:52:09

25 A Yes.

17:52:15

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1 Q How could the PBM data be used to do this? 17:52:16

2 A It's a variable that the PBMs would have
3 in their possession. Same sort of variable, the
4 basis of reimbursement variable.

5 Q Do you know whether each of the datasets 17:52:20
6 in paragraph 65 of your report contains fields
7 necessary for you to determine whether the U&C price
8 was used as a basis for determining the amount paid
9 or reimbursed when adjudicating the claim?

10 A Yes. 17:52:25

11 Q And do they?

12 A They -- not all of them, no.

13 Q Do some of them?

14 A Yes.

15 Q And the field you're looking at is the 17:52:28
16 "price basis determination" field, correct?

17 MR. ALEXANDER: Objection to form.

18 MR. LEIB: Strike that.

19 Q The price -- the field you would need in
20 the data is the "price basis determination" field; 17:52:31
21 is that correct?

22 MR. ALEXANDER: Objection to form.

23 THE WITNESS: You're asking about PBM data
24 and variable name?

25 /// 17:52:33

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1 A Correct.

18:26:46

2 Q Now, one of the things you talk about in
3 24 and 25 is that you make a distinction in your
4 formula for determining the consumer payment -- I'm
5 sorry -- the consumer overpayment in whether the
6 consumer had a co-insurance or co-pay, correct?

18:26:50

7 A Correct.

8 Q And just for the record, co-pay is a flat
9 amount, correct?

10 A Yeah, it could be -- yeah, a flat amount.

18:26:54

11 Q You pay \$5 for Tier 1 drugs, \$10 for
12 Tier 2 drugs, \$15 for Tier 3 drugs, something like
13 that, correct?

14 A Something like that. Yes.

15 Q And co-insurance is a percentage, correct?

18:26:59

16 A Yes.

17 Q Do you know what it's a percentage of?

18 A I believe -- I'm trying to think.

19 The way that I calculated it here was a
20 percentage of -- the consumer paid the percentage of
21 the total amount paid, "total amount paid" being
22 consumer portion plus the TPP portion.

18:27:03

23 Q So the amount that the TPP pays the PBM,
24 in other words, there's some total amount that the
25 PBM determines, some number. Let's say it's \$100.

18:27:08

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1 And if the co-insurance was 25 percent, the TPP 18:27:09
2 would pay the PBM \$75, and the consumer would pay
3 Walgreens \$25; is that correct?

4 A That's my understanding, yes.

5 Q Is there a field that you look at to 18:27:13
6 determine whether an individual consumer had
7 co-payment versus co-insurance?

8 A I used the -- I calculated it myself.

9 So I looked at the consumer portion
10 divided by the total amount paid by the consumer and 18:27:16
11 the TPP for a given PBM in a given month.

12 And if 90 percent of those transactions
13 were the same percentage, then I assumed that it was
14 a co-insurance situation. Otherwise, it was a
15 co-payment situation. 18:27:23

16 Q So that's the number you used, 90 percent.
17 If 90 percent of the time it was the same
18 percentage, then you decided it was co-insurance?

19 A Yes. It's my understanding that there are
20 some variables in Walgreens' data that potentially 18:27:28
21 have information on that, and also that the PBMs
22 would have information on that.

23 But this is the way that I did it with
24 what -- the data that I have currently.

25 Q What data were you looking at to determine 18:27:32

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1 that?

18:27:33

2 A To determine what? Sorry.

3 Q Whether 90 percent had a certain
4 percentage.

5 A So I was looking at -- for the PBM data
6 merged onto the Walgreens data.

18:27:36

7 If the consumer payment from the Walgreens
8 data, the TPP payment from the PBM data, the sum of
9 those becomes the denominator, the consumer payment
10 is the numerator, and if that percentage is greater
11 than -- if I see that percentage is greater than
12 90 percent of the transactions for a given month for
13 a given PBM, then I assume that it's a co-pay --
14 excuse me -- co-insurance situation.

18:27:41

15 Q And if it was 89 percent of the time, you
16 would figure it was co-pay?

18:27:48

17 A Yes. That's the current methodology.

18 Q What are you looking at -- what are we
19 getting as the sum total that we're trying to find a
20 denominator for? How do we determine that
21 denominator? What are we looking at? Is it for an
22 individual?

18:27:52

23 So Bob Smith, we're looking at all Bob
24 Smith's transactions in a month?

25 A No. This is a transaction-by-transaction

18:27:57

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1 analysis.

18:27:58

2 Q Well, I thought you said to determine if

3 it's a co-insurance, you looked at a whole month.

4 A So for a given transaction, I would

5 calculate the consumer portion as a percentage of

18:28:01

6 the total amount paid, which is given by the TPP

7 payment plus the consumer payment. So that's on a

8 transaction-by-transaction -- I first do that.

9 Q Okay.

10 A Then for a given month, I look at all of

18:28:06

11 those transactions and determine whether most of the

12 transactions have that same 25 percent, for example.

13 Q What do you mean by "those transactions"?

14 A So first I start with the PBM

15 transactions, and I look at each transaction,

18:28:11

16 calculate the percentage that the consumer paid for

17 each transaction.

18 So do you have that in your mind?

19 Q That one I've got. The individual I've

20 got.

18:28:15

21 A Okay. Okay. So then, for every month,

22 let's say for month one, there are ten transactions.

23 Q Ten transactions for -- ten transactions

24 for --

25 MR. ALEXANDER: Please --

18:28:19

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1 MR. LEIB: I understand. 18:28:20

2 Q Ten transactions for Bob Smith? Is that
3 what you're saying?

4 MR. ALEXANDER: Counsel, I would just ask,
5 please let the witness complete her answer in full 18:28:22
6 before asking the next question, even if it's to
7 clarify what she is testifying to.

8 BY MR. LEIB:

9 Q No, it's not just for Bob Smith.

10 So what are all the transactions that 18:28:25
11 you're looking at to decide if Bob Smith has a
12 co-pay or co-insurance?

13 A So I'm looking at -- again, this is the
14 PBM-produced data for the fund plaintiffs.

15 So I'm looking at, for a given PBM, for a 18:28:30
16 given month, all of the transactions in that month.
17 So these were the fund plaintiffs, right, for a
18 given PBM.

19 Q Well, you first said, "For a given PBM for
20 a given month." And then you said, "So these were 18:28:35
21 the fund plaintiffs," right?

22 So, look. Steamfitters -- which did have
23 co-insurance -- Steamfitters had a specific plan.
24 That plan provided that they had co-insurance.

25 Are you only looking at Steamfitters 18:28:40

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1 beneficiaries in that month, or are you looking at 18:28:41
2 all CastiaRx transactions in that month?

3 MR. ALEXANDER: Objection to form.

4 THE WITNESS: So I'm doing it by PBM. So
5 to answer your question, if I looked at -- I would 18:28:45
6 look at Castia transactions for month one for all
7 of -- all of the transactions in that month, and
8 determine if the majority, or more than the -- you
9 know, 90 percent, were the same percentage,
10 25 percent, 35 percent, whatever it is, then I would 18:28:50
11 identify that as a co-insurance situation.

12 That works with the data that I have here.
13 If I'm given more PBM data, my assumption is that
14 the PBM -- we would ask the PBM to turn over that
15 information that would allow me to identify whether 18:28:56
16 there was a co-insurance or co-pay situation.

17 BY MR. LEIB:

18 Q Before we get to if the PBM turns over
19 more data, you understand that CastiaRx administers
20 thousands of plans, right? 18:29:00

21 A I don't know that. It wouldn't surprise
22 me.

23 Q It would surprise you or wouldn't?

24 A Would not.

25 Q What about Express Scripts? You know 18:29:04

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1 Express Scripts, which is the largest PBM, I 18:29:05
2 believe, in the country. They have thousands of
3 plans they work with.

4 You understand that, right?

5 MR. ALEXANDER: Objection to form. 18:29:08

6 THE WITNESS: Again, that wouldn't
7 surprise me. I don't have a feel for how many plans
8 they have.

9 BY MR. LEIB:

10 Q Do you understand that, for example, in 18:29:11
11 this case, Steamfitters' plan had co-insurance, but
12 IBEW's plan had a co-pay?

13 A I'm looking at Exhibit 3 because I have
14 that in Exhibit 3. I just don't remember.

15 So yes, IBEW had a co-pay plan and 18:29:16
16 Steamfitters had a co-insurance.

17 Q Do you think all of CastiaRx's employers,
18 union funds, other entities that they work with,
19 other plans that they work with, do you think they
20 all had co-insurance? 18:29:22

21 A I didn't say that.

22 Q But you -- if 90 percent of the
23 transactions in the month for CastiaRx were
24 co-insurance transactions, you would apply
25 co-insurance to all of the transactions? 18:29:25

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1	A So I only have transactions for	18:29:26
2	Steamfitters at this point.	

3 Q Okay. So then you're only looking at one
4 plan. What's your methodology if there's more than
5 one plan? 18:29:29

6 A So like I said earlier, I believe that the
7 PBMs would be able to give that information. And I
8 also believe there are variables in Walgreens' data
9 that indicate co-insurance. But that's not
10 something I looked at at this point. I did -- I 18:29:34
11 used the methodology that I just described for the
12 data that I have.

13 Q We looked at -- first of all, what
14 fields -- what fields are you talking about?

15	MR. ALEXANDER: Objection to form.	18:29:38
16	BY MR. LEIB:	

17 Q In the PBM data, what fields are you
18 talking about?

19	A I don't have a particular field name in	
20	the PBM data. That would be something that we would	18:29:41
21	ask them to produce.	

22 Q Well, do you know if they have data that
23 would differentiate between -- I'm sorry -- if they
24 have fields that would differentiate between co-pay
25 and co-insurance? 18:29:45

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1 A I assume they do because they need it to 18:29:45
2 adjudicate the claim.

3 MR. LEIB: Well, let's look at Tab R, and
4 mark that as Exhibit 526.

5 (Exhibit 526 was marked for identification 18:29:49
6 and is attached hereto.)

7 MR. WOROBIJ: Exhibit marked.

8 BY MR. LEIB:

9 Q Do you see any fields here that are either
10 co-pay or co-insurance? 18:29:51

11 And this is Express Scripts data 1548, ESI
12 1548.

13 MR. ALEXANDER: Objection to form.

14 MR. LEIB: I'm just putting -- what's the
15 form? I'm telling what the Bates number is. It's 18:29:55
16 ESI 1548.

17 MR. ALEXANDER: I have no objection to
18 that aspect of the question.

19 MR. LEIB: There you go.

20 Q Do you see -- I'll just point you to it. 18:29:58

21 Do you see in column K, it says, "bill
22 patient pay amount," and under that it says, "co-pay
23 amount"?

24 A I'm not there. Hold on. I was just
25 looking at the rest of the variables here. 18:30:02

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1 Okay. Column K, you said?

18:30:03

2 Q Yeah.

3 A Okay.

4 Q That's the only field that says, "co-pay"

5 or "co-insurance" in the data, and it says, "co-pay

18:30:06

6 amount."

7 Do you know whether there's co-insurance

8 anywhere in this field or not?

9 MR. ALEXANDER: Objection to form.

10 THE WITNESS: I don't know just looking at

18:30:09

11 it now.

12 BY MR. LEIB:

13 Q And do you know if Express Scripts has, in

14 any data they could produce, a co-insurance field?

15 A Do I know? I'm not sure, but I believe

18:30:12

16 they would have that information.

17 Q What's the basis of your belief?

18 A They need that information to adjudicate

19 the claim.

20 Q Well, when they adjudicate the claim, they

18:30:16

21 can put the data in any format they want, correct?

22 A Yes.

23 Q And they could put in this column here

24 both co-pay and co-insurance and just label it

25 "co-pay," correct?

18:30:20

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1 MR. ALEXANDER: Objection to form. 18:30:21

2 THE WITNESS: In this particular column,
3 yes, but they need to have information to allow them
4 to determine what the co-pay amount is or what the
5 amount is that needs to go in that column. 18:30:24

6 BY MR. LEIB:

7 Q And that information is the plan design
8 information, correct?

9 MR. ALEXANDER: Objection to form.

10 THE WITNESS: That information would be -- 18:30:28
11 yes. Yes.

12 BY MR. LEIB:

13 Q And that's a different document than this
14 document, correct?

15 MR. ALEXANDER: Objection to form. 18:30:30
16 Objection to scope.

17 THE WITNESS: I don't know if it's a
18 different document. This could be a subset of that
19 document. I don't know.

20 BY MR. LEIB: 18:30:32

21 Q Well, nowhere here does it indicate for
22 any particular fund what their plan design is,
23 correct?

24 MR. ALEXANDER: Objection to form.

25 THE WITNESS: I don't know. I haven't 18:30:35

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1 studied it for that. I can look and let you know if 18:30:36

2 I think any of those variables fall into that

3 category, but I don't know. I don't have an opinion

4 on that.

5 BY MR. LEIB: 18:30:40

6 Q Looking at this data, for any particular

7 line, can you know if it's co-insurance or co-pay?

8 A For any particular line? I can determine

9 that based on the calculation that I was describing

10 earlier. 18:30:44

11 Q Well, you would have to -- wouldn't you

12 now aggregate all the different -- even to do your

13 formulary or your methodology, you'd have to

14 aggregate all the transactions from a single plan,

15 correct? 18:30:49

16 MR. ALEXANDER: Objection to form.

17 THE WITNESS: Possibly. I haven't thought

18 about that. I was working with the data that has,

19 you know, all -- it's all one plan.

20 But yes, you could do it by plan. 18:30:52

21 BY MR. LEIB:

22 Q How would you know? How would you figure

23 out how to group the plans together?

24 A Again, I believe that's data that the PBM

25 would have. 18:30:56

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1 Q Do you know for sure that the PBM has that 18:30:56
2 data?

3 A I'm fairly certain that they do, yes.

4 Q Are you aware that within a plan design,
5 there can be both co-insurance and co-pays? 18:30:59

6 A No, I don't have that understanding. I
7 don't have --

8 Q Do you know how Medicare works?

9 I'm sorry. I may have interrupted you.

10 Did you mean to the finish something? 18:31:03

11 A No. I just said I don't have knowledge of
12 that.

13 Q Do you know how Medicare works? I'm
14 sorry. Medicare prescription drug plans.

15 MR. ALEXANDER: Objection to form. 18:31:07
16 Objection to scope.

17 THE WITNESS: I have a very general idea.

18 BY MR. LEIB:

19 Q Are you aware that there's a deductible
20 stage? 18:31:10

21 A I'm not -- I'm aware there's a donut hole.
22 That's the -- that's the piece that gets all the
23 publicity.

24 Q So there's usually a deductible stage. In
25 fact, there's always a deductible stage. There's an 18:31:13

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1 initial coverage stage. 18:31:14

2 And are you aware that the initial
3 coverage stage can be both a co-pay -- can be either
4 a co-pay or co-insurance?

5 MR. ALEXANDER: Objection to form. 18:31:18
6 Objection to scope.

7 THE WITNESS: I don't have that
8 understanding.

9 BY MR. LEIB:

10 Q Do you know what the coverage gap or the 18:31:19
11 "donut hole," as you called it, is?

12 MR. ALEXANDER: Same objection.

13 THE WITNESS: Do you mean do I know what
14 dollar amounts that corresponds to or -- what's your
15 question? 18:31:24

16 BY MR. LEIB:

17 Q Whether it's co-pay or co-insurance.

18 A During the donut hole?

19 Q Um-hum.

20 A No. 18:31:26

21 Q The donut hole used to be 100 percent
22 individual pay.

23 A Yeah. That's why I was a little confused
24 by your question, but --

25 Q But there were changes in the law in the 18:31:29

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1 Bush Administration and the Obama Administration, 18:31:30
2 and now the donut hole is down to 25 percent
3 co-insurance, just to let you know.

4 A Okay.

5 Q Have you heard the -- that there's a 18:31:34
6 catastrophic phase after the donut hole?

7 A I have heard --

8 MR. ALEXANDER: Objection to form.
9 Objection to scope.

10 BY MR. LEIB: 18:31:37

11 Q And are you aware that that could be
12 co-insurance or co-pay?

13 MR. ALEXANDER: Same objections.

14 THE WITNESS: I don't have an
15 understanding of that. 18:31:39

16 BY MR. LEIB:

17 Q So if, in fact, the plan had both
18 co-insurance and co-pay in with it, your methodology
19 could end up causing you to assign everybody a
20 co-pay, because it wasn't 90 percent of the 18:31:43
21 individual transactions, correct?

22 A Well, my methodology actually is -- the
23 PBMs will turn over data that has that information.
24 So that's my first line.

25 What I have done at this point is the 18:31:47

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1 calculation that I described for you. Yes. But I 18:31:48
2 believe that we'll be able to get that data from
3 PBMs.

4 Q But if you're not able to get that data
5 from the PBM, and you applied your methodology, and 18:31:51
6 there is a plan that has both co-pay and
7 co-insurance within it, you might take that and
8 assign everybody co-pays because more than
9 10 percent of the transactions among the plan
10 participants in a month don't have a fixed 18:31:56
11 percentage.

12 MR. ALEXANDER: Objection to form.

13 THE WITNESS: Potentially. I haven't
14 looked at that.

15 BY MR. LEIB: 18:31:59

16 Q Are you aware that plans have deductibles?

17 A I am aware that there can be a deductible,
18 yes.

19 Q And in a deductible phase, the consumer
20 generally is paying 100 percent and the TPP is 18:32:03
21 paying zero; is that your understanding of
22 deductibles?

23 A Yes.

24 Q Have you accounted for deductibles in any
25 way in your methodology? 18:32:06

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1 A No. 18:32:07

2 Q Because you don't take that into account,
3 couldn't that cause you to overstate the consumer's
4 damage?

5 A No. 18:32:09

6 Q Let me give you an example. Well, let me
7 ask you, why do you say it couldn't cause you to
8 overstate the consumer's damage?

9 A It's my understanding that the damage
10 is -- or the overpayment should be calculated on a 18:32:13
11 transaction-by-transaction basis.

12 So if a consumer has an overpayment on a
13 given transaction, the deductible doesn't make a
14 difference to that.

15 Q Why wouldn't it? 18:32:18

16 If you're in a phase where you're paying
17 100 percent and the TPP is paying zero, then in your
18 example, you're going to assign that person a
19 percentage of the PSC price as the amount they
20 should have paid, not 100 percent of the PSC price 18:32:23
21 as the amount they should have paid, correct?

22 MR. ALEXANDER: Objection to form.

23 THE WITNESS: I'm -- no. I'm not
24 following you. I'm sorry.

25 /// 18:32:27

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1 BY MR. LEIB:

18:32:27

2 Q Let's say you have a \$500 deductible in a
3 plan, and the plan has 25 percent co-insurance.
4 Okay?

5 A \$500 deductible, 25 percent co-insurance.

18:32:29

6 Okay.

7 Q Right. There's a transaction on
8 January 1st. The first transaction of the year.
9 The consumer paid \$50. The PSC price is \$10.

10 Do you have that in your head?

18:32:34

11 A I think so. I might need to ask you
12 again, but yes, so far.

13 Q The consumer paid \$50, the PSC price is
14 \$10.

15 Under your methodology, because you don't
16 take deductibles into account, you're going to say
17 the person should have paid 25 percent of the \$10
18 PSC price, or \$2.50, correct?

18:32:38

19 MR. ALEXANDER: Objection to form.

20 THE WITNESS: If I could use my
21 calculator, I could do on the math for you. But --

18:32:42

22 BY MR. LEIB:

23 Q What's 25 percent of \$10?

24 A 2.50.

25 Q So you're going to say that that person

18:32:45

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1 | should have paid $2.50, correct? | 18:32:46
```

2 MR. ALEXANDER: Same objection.

3 THE WITNESS: Yes, provided they have a
4 co-insurance. Okay. I'm with you.

5 BY MR. LEIB: 18:32:49

6 Q The person actually paid \$50 because they
7 were in their deductible. So they paid the full
8 cost. And you're going to take \$50, and you're
9 going to subtract \$2.50, and you're going to say the
10 damage is \$47.50, correct? 18:32:54

11 MR. ALEXANDER: Objection to form.

12 THE WITNESS: Yes.

13 BY MR. LEIB:

14 Q But if you're in a deductible phase and
15 you're paying 100 percent, you should pay 18:32:57
16 100 percent of the PSC price, or \$10, correct?

17 MR. ALEXANDER: Objection to form.

18 THE WITNESS: It's my understanding that I
19 was to look at it on a transaction-by-transaction
20 basis and calculate the difference as the formulas 18:33:01
21 that I have listed in my report.

22 BY MR. LEIB:

23 Q That wasn't my question.

24	If you're in the deductible phase and	
25	you're paying 100 percent, you should pay	18:33:04

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1 100 percent of the PSC price, or \$10, correct?

18:33:05

2 MR. ALEXANDER: Objection to form.

3 THE WITNESS: I don't know if that's the
4 case.

5 BY MR. LEIB:

18:33:08

6 Q Well, if you're in a deductible, you
7 understand -- you just testified five minutes ago --
8 you understand that generally plan designs require
9 people in the deductible to pay 100 percent of the
10 cost of the drug, right?

18:33:12

11 MR. ALEXANDER: Objection to form. I'm
12 sorry. Objection to scope as well.

13 BY MR. LEIB:

14 Q That's your understanding, correct,
15 Dr. Hilton?

18:33:14

16 MR. ALEXANDER: Same objection.

17 THE WITNESS: That is my understanding of
18 a deductible, yes.

19 BY MR. LEIB:

20 Q And 100 percent of \$10 is what?

18:33:16

21 A \$10.

22 Q And \$50 minus \$10 is what?

23 A \$40.

24 Q \$47.50 minus \$40 is what?

25 A Wait. Sorry. It's late in the day for --

18:33:21

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1 those are not the easy math questions.

18:33:22

2 Q \$47.50 minus \$40 is what?

3 A 7.50.

4 Q So in this situation, because you didn't

5 take deductibles into account in your methodology,

18:33:25

6 the consumer would have overstated damages of \$7.50,

7 correct?

8 MR. ALEXANDER: Same objection.

9 THE WITNESS: I don't know if I would

10 agree with you on that based on my instruction to

18:33:28

11 look at it on a transaction-level basis.

12 BY MR. LEIB:

13 Q So you were instructed by counsel not to

14 consider deductibles?

15 A Was I actually instructed? I'm not sure

18:33:32

16 that was an actual instruction.

17 My understanding is that each -- the

18 overpayment should be calculated on a

19 transaction-by-transaction-level basis, though.

20 Q This is a transaction-by-transaction

18:33:37

21 basis. It's a transaction on January 1st, and I'm

22 trying to get the right division between the TPP and

23 the consumer.

24 The TPP paid --

25 MR. ALEXANDER: Objection -- sorry.

18:33:40

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1 BY MR. LEIB: 18:33:41

2 Q The TPP paid zero. So under any
3 methodology, right, the TPP couldn't be damaged
4 because the TPP paid zero, right?

5 A That's right. 18:33:44

6 Q The consumer paid \$50. So the maximum
7 damage the consumer could have is \$50, right?

8 A The maximum -- yes.

9 Q And under your methodology that we just
10 walked through, in the situation we just walked 18:33:48
11 through, you would assign damages to that person of
12 \$47.50, correct?

13 MR. ALEXANDER: Same objections.

14 THE WITNESS: Yes, that's what the
15 methodology would do. 18:33:52

16 BY MR. LEIB:

17 Q If, in the plan design, the person paid
18 100 percent, which is what the person paid
19 initially, you would have to assign that person \$10
20 of damage -- \$10 -- strike that. 18:33:56

21 If the plan design said that the person
22 paid 100 percent because they were in the deductible
23 phase, they would have to pay the full \$10 PSC
24 price, correct?

25 MR. ALEXANDER: Objection to form. 18:34:00

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1	Objection to scope.	18:34:00
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2 THE WITNESS: I didn't take into account
3 the plan design. That wasn't something I was asked
4 to look at.

5 BY MR. LEIB: 18:34:03

6 Q So another thing you didn't take into
7 account.

8 Are you aware that Steamfitters didn't
9 have a straight co-insurance?

10	MR. ALEXANDER: Objection to form.	18:34:05
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11 THE WITNESS: Do you mind if I turn the
12 light on again? I'm sorry.

13 BY MR. LEIB:

14 Q I do not mind at all.

15	A	If I don't move, it turns off.	18:34:08
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16	I'm sorry. Restate your question again.
----	---

17	Q	Sure.
----	---	-------

18 Are you aware that Steamfitters' plan
19 design was not that it would always be 25 percent
20 co-insurance?

21 A I don't have an understanding of that. I
22 know we calculated it, and it turned out to be
23 whatever it was. I don't have the calculation off
24 the top of my head, or if it varied by year or --
25 I'm not sure what you said -- year.

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1	Q And based on your calculation, you	18:34:18
2	determined that at least 90 percent of the	
3	transactions had a specific set percentage of 75/25	
4	and, therefore, you assigned all transactions a	
5	75/25 division, correct?	18:34:22

6 A That's not exactly right.

7 I believe the way that it worked was, I
8 would determine whether there was co-insurance in
9 effect based on the 90 percent, you're saying. But
10 then when I did my calculations, I used the 18:34:27
11 percentage that is shown for the transaction.

12 So whatever the transaction -- the
13 percentage is for a given transaction, that
14 percentage would remain in effect.

15	Q For the whole month, for all of the	18:34:32
16	transactions for that PBM?	

17 A So looking at -- for example, looking at
18 Exhibit 3, if we take one transaction --

19 Q What are we looking at? The ESI data?

20	A No. Exhibit 3C.	18:34:37
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21 Q Oh, okay. In your report, Exhibit 3C. Go
22 ahead.

23	A Yes.
----	--------

24 So there -- sorry. Are you there?

25	Q I'm there. Go ahead.	18:34:40
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1 A Okay. So there, we have -- the consumer 18:34:41
2 paid \$5, the TPP paid \$15, for a total of \$20. So
3 that split is held constant. Whatever the share
4 that the consumer paid of the total amount would be
5 applied to the rest of the calculation to figure out 18:34:46
6 the total -- sorry -- the consumer overpayment and
7 the TPP overpayment. I believe you're saying --

8 Q Which transaction --

9 A -- something other than that.

10 Q I'm sorry. I apologize. 18:34:50
11 Which transaction are you looking at?

12 A Right now I'm just looking at the first
13 transaction for the Arizona -- down below,
14 "Panel B: Transactions with Co-Insurance."

15 Q Okay. You said \$20, but the total -- 18:34:54
16 total is 20.09. \$20.09, correct?

17 A Yes. Sorry. Yes.

18 Q Okay. And the total overpayment -- well,
19 the total consumer payment is \$1.27, and -- I'm
20 sorry. 18:35:00

21 The amount paid by the TPP was 15.07, and
22 the amount paid by the consumer was 5.07, which is
23 one-third of 15.07, approximately, correct?

24 A Well, it would be -- you'd take the \$5
25 relative to the \$20. 18:35:06

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1 Q Right. And then you figured out it was 18:35:06
2 25 percent.

3 A Yes. I thought you said a third. That's
4 why I was correcting you.

5 Q And then you applied that 18:35:09
6 75 percent/25 percent division to all of the
7 transactions for Steamfitters for that -- in this
8 case -- you just said you would do it month by
9 month. In this case, they always came out that way.

10 A So I think you're confusing a couple 18:35:14
11 things.

12 First, I did the calculation that you're
13 referring to for a given month, for a given PBM, to
14 determine if a co-insurance was in effect versus a
15 co-pay. 18:35:18

16 Q Okay.

17 A If I determined that co-insurance was in
18 effect, I then used the Exhibit 3 -- the actual
19 numbers, the actual split, between what the consumer
20 paid and what the TPP paid. 18:35:22

21 So I'm not -- the number that I found in
22 that initial analysis where I was determining
23 whether it was a co-pay or not isn't necessarily the
24 one I'm going to use. I recalculated it. It turns
25 out to be the same. But it's not that I hold that 18:35:27

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1 constant over some set of transactions or anything. 18:35:28

2 It's specific to a given transaction.

3 Q So whatever the division was for the
4 original, you would divide it for the revised number
5 based on the PSC price? 18:35:32

6 A Correct.

7 MR. LEIB: Okay. Let's look at Tab S, and
8 then we'll take a break after we look at Tab S,
9 which is Exhibit 527.

10 (Exhibit 527 was marked for identification 18:35:36
11 and is attached hereto.)

12 MR. WOROBIJ: Exhibit 527 marked.

13 BY MR. LEIB:

14 Q You can look at page 223. On the bottom
15 right-hand corner, there are page numbers. So 223 18:35:38
16 actually doesn't make sense. Hold on one second.
17 242. And this is LOCAL439_0000223.

18 And actually, before we go on, why don't
19 we look at the first page of the document.

20 Do you see on the first page of the 18:35:45
21 document it says, "Steamfitters Local 439 Health &
22 Welfare Plan, Summary Plan Description, January 1st,
23 2013"?

24 A Yes.

25 Q Do you understand what a summary plan 18:35:48

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [x] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: January 23, 2023

23 Carla Soares
24

25 CARLA SOARES

CSR No. 5908